

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK ALBERT FLOREZ,	)	No. C 0 06-04141 JSW (PR)
	)	
Petitioner,	)	
	)	
vs.	)	<b>ORDER DENYING MOTION TO FILE</b>
	)	<b>UNTIMELY APPEAL</b>
TOM CAREY, WARDEN, et.al	)	
	)	(Docket No. 22)
	)	
Respondent.	)	

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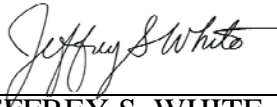
Petitioner, a prisoner of the State of California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254. On March 2, 2009, this Court denied the petition on the merits. On May 7, 2009, 66 days after judgment, Petitioner filed a motion for relief from Petitioner's failure to file a timely notice of appeal (docket no. 22). In the motion, Petitioner informs the Court that after receiving the Court's decision denying relief, Petitioner was informed that he would be moved to another prison and that his move to another prison in April impeded his ability to timely file a notice of appeal.

An appeal of right may be taken only by filing a valid notice of appeal in the district court. Fed. R. App. P. 3(a)(1). Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal "be filed with the clerk of the district court within 30 days after the entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). Rule 4(a)(5) allows a motion for an extension of time if the party requests it within thirty days of the expiration of the time to file the notice and shows excusable neglect or good cause. *See* Fed. R. App. P. 4(a)(5). Because Petitioner filed his motion

1 beyond the allowable time for this Court to provide an extension under Rule 4(a)(5), the  
2 Court lacks authority to provide Petitioner the requested relief. Therefore, Petitioner's  
3 motion is DENIED (docket no. 22).

4 IT IS SO ORDERED.

5 DATED: March 12, 2010

  
6 JEFFREY S. WHITE  
7 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

FRANK ALBERT FLOREZ,  
Plaintiff,

Case Number: CV06-04141 JSW

**CERTIFICATE OF SERVICE**

v.

TOM CAREY et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Frank Albert Florez  
V18804  
P.O. Box 5246  
Corcoran, CA 93212

Dated: March 12, 2010

Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk